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U.S. Citizenship and Immigration Services

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[redacted]

FEB 0 2 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the employment-based immigrant visa petition was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. In revoking the approval of the petition, the director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that an evaluation of an alien's extraordinary ability is a subjective one and that in cases where reasonable persons could disagree, as with this petition that was initially approved, "the benefit of the doubt should go to the petitioner." It is precisely because an evaluation of ability would be subjective that the regulations require objective evidence in three of ten categories indicative of national or international acclaim. Thus, an adjudication for the classification sought does not involve the adjudicator's subjective opinion of the alien's ability. Rather, the adjudication involves an evaluation of whether the petitioner has demonstrated, through objective evidence, that the alien has sustained national or international acclaim.

Section 205 of the Act provides that U.S. Citizenship and Immigration Services (CIS) may revoke the approval of any petition for what is deemed "good and sufficient cause." 8 C.F.R. § 205.2 permits the director to revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." For the reasons discussed below, we find that the initial approval was in error and uphold the director's revocation of that approval.

In addition, counsel also raises procedural concerns regarding how the director handled the physical file and requests for an extension of time to respond. While it is unfortunate that one of the petitioner's responses was lost, the director provided the only remedy possible, by allowing counsel to resubmit the lost documentation. Similarly, the remedy for any miscommunication regarding an extension of time to respond would be to consider information that might have been submitted during that time on appeal. While unfortunate, we do not find that these procedural issues warrant a reversal of the director's final decision.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the CIS regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a photojournalist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner received the Editor's Choice Award from the International Library of Photography 1998-1999, won first place at the Great World photographic exhibition organized by Profnet, Ltd. in February 1999, and was recognized for the best travel photograph by *Népszabadság Magazin* in their 1998 contest.

In the Notice of Intent to Revoke, the director noted the lack of evidence regarding the significance of the above honors. In response, counsel asserts that the International Library of Photography is one of the largest organizations in the world and that *Népszabadság Magazin* is a national publication with a circulation of 360,000. In support of the latter assertion, the petitioner submitted printed material regarding *Népszabadság Magazin* from an unknown source with a certified translation at the bottom of the page.

In his final decision, the director appears to confuse the petitioner's awards with a letter acknowledging the quality of the petitioner's photographs issued by [redacted] Manager of *Comeg Magyarosząg Orvostechnikai Kft*. The director concludes that this letter is not an award. On appeal, counsel reiterates his arguments made in response to the notice of intent to revoke.

Counsel's assertion that the International Library of Photography is one of the largest organizations in the world is not supported by the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It remains that the record contains no information regarding the organization or the prestige of its awards.[1]

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[1] According to the organization's website, www.picture.com, the organization is a "vehicle for amateur photographers to gain exposure in anthologies." A review of the whole site reveals that the organization uses awards as a method of selling expensive anthologies, sometimes known as "vanity" publications, to the "winners." There is no indication the anthologies have a significant circulation beyond those purchased by "winners" or that the most experienced and acclaimed photographers aspire to win these awards.

The petitioner has also not submitted any information about the exhibit sponsored by Profnet, Ltd. at which she won first prize. Thus, we cannot conclude that this is a nationally or internationally recognized award.

Finally, the petitioner has established that *Népszabadság Magazin* is a nationally circulated magazine. The petitioner has not, however, established the nature of the contest in which her photograph was selected as one of the top travel photographs. The translation of a section of the magazine that does not appear in the record indicates that the competitors included just over a hundred readers of the magazine. Winners were chosen in at least 10 topics. Thus, it is not clear that this competition was a nationally recognized photography contest that the most experienced and acclaimed photographers entered and aspired to win.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted her membership credentials for the National Press Photographers Association (NPPA) and the Photographic Society of America (PSA). Counsel asserted that the NPPA is open to members of the photojournalist field and that PSA membership is open to professionals and amateurs. In his notice of intent to revoke, the director noted the lack of evidence that either association requires outstanding achievements of their members. In response, counsel concedes that NPPA is a trade association of photojournalists that is open to all photojournalists and has nearly 9,000 members. Counsel asserts, however, that the petitioner is also a member of the Motion Picture Association of America (MPAA), accredited only after a review and evaluation of her work.

In support of the latter assertion, the petitioner submitted a letter from [redacted] Public Relations for MPAA. Ms [redacted] asserts that accreditation as a Los Angeles press member by the MPAA requires at least six motion picture related clippings per year as well as a letter from the editor of a publication confirming the prospective member's status as a photojournalist. These requirements must be met each year.

Counsel also referenced pending membership in a Hungarian Association. Membership obtained after the date of filing is not evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The director concluded that the petitioner had not submitted new evidence to demonstrate that the petitioner meets this criterion. On appeal, counsel reiterates his previous arguments.

Membership in large trade associations cannot serve to meet this criterion as membership is not limited to those who have demonstrated outstanding achievement in the field. The evidence regarding the petitioner's accreditation by MPAA is not persuasive. While accreditation involves a review of the applicant's work and not all applicants are accredited, it is not clear that six motion picture related clippings and verification that the applicant continues to work in the field are outstanding achievements. Nor has the petitioner established that accreditation by the MPAA is a "membership" in an organization. Rather, it is a press credential that allows the petitioner to attend certain events pivotal to her job as a celebrity photojournalist.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted a March 19, 2000 article in *Petófi Népe* about the petitioner's move to Los Angeles to continue her photojournalist career. In his notice of intent to revoke, the director questioned whether the article was about the petitioner and noted the lack of evidence as to the circulation of the publication in which the article appeared.

In response, counsel argued that the article is about the petitioner's work in the field. Counsel further asserted that *Petófi Népe* is the leading newspaper for the city of Kecskemét, which includes one percent of the population of Hungary. Counsel compared the size of this city in proportion to the population of Hungary with the city of Los Angeles, noting that the *Los Angeles Times* is major media. In support of counsel's assertions, the petitioner submitted Internet materials about Kecskemét. The director concluded that no new evidence had been submitted regarding this criterion. On appeal, counsel reiterates his previous arguments.

We concur with counsel that the article is about the petitioner. In addition, the petitioner did submit new evidence regarding *Petófi Népe* in response to the director's notice of intent to revoke. Nevertheless, that evidence is not persuasive. That the paper is the main paper for a single city, even a city with one percent of the national population, is not evidence that the paper is major media. The petitioner has not submitted any evidence that the paper is circulated nationally or even outside Kecskemét.[2] Counsel's comparison with the *Los Angeles Times* is not persuasive. The *Los Angeles Times* is not only a paper that serves a large city, it has a national edition that has a national circulation.

Even if the petitioner had established that *Petófi Népe* had a national circulation, the petitioner would also have to establish that the section in which the article about her appeared was nationally circulated. For example, we would not consider an article that appeared only in a local edition of the *Los Angeles Times* to be indicative of national or international acclaim.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted a letter from [redacted] Food and Beverage Director of the Port Royal Restaurant in Oxnard, California requesting that the petitioner judge a promotional photography contest for the restaurant's patrons. In a second letter, Mr. [redacted] thanks the petitioner for judging the contest and expresses an interest in making it an annual event. In addition, Dr [redacted] Vice-Principal of the Mora Ferene Primary School, certifies that the petitioner, a former pupil of the school, was a member of the jury at a photographic exhibition organized and displayed at the school.

In his notice of intent to revoke, the director questioned whether judging the work of students or restaurant patrons constitutes judging the work of others in the same or allied field as the petitioner. In response, counsel asserted that the petitioner meets the plain language of the regulation as she has judged the work of others in her field of photography. The director concluded that no new evidence had been submitted to overcome his concerns. On appeal, counsel reiterates previous arguments.

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[2] A review of www.abyznewslinks.com/hunga.htm does confirm that *Petófi Nepe* is the major newspaper for Kecskemét. That site also reveals, however, that Hungary has six national newspapers; *Petófi Nepe* is not one of them.

Counsel is not persuasive. We find that "in the same or allied field" clearly modifies "others" and not "work." Thus, the individuals whose work is being judged must be in the petitioner's field. At the very least, the individuals being judged should be near completion of any training required to enter the field. Judging the work of elementary school students and amateur snapshots taken by restaurant patrons is not akin to judging the work of other professional photojournalists.

Regardless, all evidence must be evaluated as to whether it is indicative of or uniquely consistent with national acclaim. Being asked by a friend to judge an amateur photography contest at his restaurant and being requested by one's former school to judge a student competition is not evidence indicative of or uniquely consistent with national acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted what appear to be copies of the pages of a book entitled "35 mm: Celebrity Photographs by [The Petitioner]." The book, consisting of photographs taken by the petitioner, was published by Labrador Publishing in California. In his notice of intent to revoke, the director questioned whether this book could be considered "scholarly." In response, counsel asserted that a photographer produces photographs and, thus, a book containing photographs is scholarly for a photographer.

The director concluded that the petitioner had not submitted any new evidence. On appeal, counsel reiterates previous arguments. Counsel is not persuasive. First, the appearance of the book suggests that it was not published by a major publishing company. Nor has the petitioner submitted any evidence that the book has sold well. We note that plain language of the regulation requires publication in major trade publications or other major media. A book published by a small publishing company and that has not sold nationally cannot be considered major media.

Second, we agree with the director that the book is not scholarly. We do not find that any published material relating to the field suffices to meet this criterion. The use of the word "scholarly" implies that the materials must serve as a potential learning tool. Examples of scholarly work in the petitioner's field would be a scholarly analysis of historical photography or the art of photography itself. A collection of photographs is simply not "scholarly" by any meaning of the word.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Dr. [redacted] Principal of the Kada Elek High School of Economy, asserts that the school organized and displayed photographs taken by the petitioner, a former pupil of the school, at an exhibition entitled "Hollywood in the Eyes of a Resident of Kecskemét." Anett Czombos of the Pólus Róna Shopping Center certifies that the center organized an exhibition of the petitioner's photographs entitled "Our Environment." Neither certification indicates when these exhibitions occurred. In his notice of intent to revoke, the director questioned whether these exhibitions were consistent with or indicative of the petitioner's extraordinary ability. In response, counsel asserted that the director was going beyond the requirements of the regulation, which does not place any restrictions on the type of exhibition. Counsel further asserted that schools and shopping centers are currently used for artistic exhibitions as they are accessible by the public.

The director concluded that the petitioner had not submitted any new evidence. On appeal, counsel reiterates his previous arguments. We do not find counsel's interpretation to be useful. While the regulations do not specifically qualify the nature of the artistic exhibition or showcase, we cannot ignore that any professional artist must display her work to earn a living in her field. Painters must display their paintings for sale in their own workshop or rented gallery space. A photojournalist working in her field will have photos on display in the magazines for which she works or those who buy them freelance. An inability to look at the prestige and significance of the exhibition would render this criterion meaningless.

As stated above, the evidence submitted to meet any criterion must be evaluated as to whether it is indicative of or uniquely consistent with national or international acclaim. Community exhibitions in schools attended by the petitioner and local shopping centers are not indicative of or uniquely consistent with the petitioner's national acclaim in Hungary.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted numerous letters in support of this criterion. Counsel quotes these letters at length in all of his briefs. The director concluded that the letters were work references and not supported by evidence of acclaim.

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. While we will evaluate the letters briefly, we note that, per our discussion above, the objective evidence submitted falls far short of meeting any other criterion. Favorable evaluations of the petitioner's talent cannot overcome the lack of objective evidence indicative of or uniquely consistent with national or international acclaim.

The letters are from professionals in the film, photography, and publishing industries, including award-winning cinematographer [redacted] Most are clients of the petitioner, while others were contacted and asked to evaluate her portfolio. While they all praise the petitioner's talent in general terms, some only go so far as to describe it as "above average" or "of professional quality." More significantly, they do not identify a specific contribution that has had a major impact on the field of photojournalism. For example, none of them assert that they have been influenced by the petitioner or provide examples of how the industry has changed in light of the petitioner's work. The record does not indicate that she has set a standard to which other photojournalists aspire. Simply being good at your job and impressing your clients is not a contribution of major significance to the field as a whole. Moreover, praise from experts who had not previously heard of the petitioner but who were contacted for an evaluation to support the petition is not evidence that the petitioner is nationally or internationally acclaimed.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a photojournalist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a photojournalist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.